



## Legislative Bulletin.....March 1, 2001

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**H.R. 333—Bankruptcy Abuse Prevention and Consumer Protection Act of 2001**

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### **H.R. 333—Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 (Gekas)**

**Summary:** This bill is essentially identical to H.R. 2415 of the 106<sup>th</sup> Congress (which overwhelmingly passed both chambers but was pocket vetoed by President Clinton) and to S. 220 of the 107<sup>th</sup> Congress. H.R. 333 is aimed at reducing frivolous bankruptcy claims (by requiring that higher-income filers who can repay some of their debts actually do so) while protecting debtors *vis a vis* creditors. The legislation establishes a needs-based system (or “means test”) that accounts for a debtor’s income, expenses, obligations, and any “special circumstances” when determining whether the debtor can repay at least a portion of the debt (rather than file under Chapter 7 to erase virtually all debts).

The bill moves child support and alimony debts from the number seven priority (on the list of what debts must be paid and in what order) to the number *one* priority, thereby preventing some debtors from using bankruptcy to evade child support or alimony payments. The bill also includes provisions for law firms and other counseling agencies to educate consumers about debt, including required credit counseling for pre-bankruptcy filers and required explanations of non-bankruptcy options and the consequences of bankruptcy to debtors. Retirement accounts that are tax-exempt and worth \$1 million or less would not count towards a debtor’s estate, nor would Social Security benefits, withheld wages for contributions to employee benefit plans, or funds (up to \$5000 per beneficiary) placed in an education IRA or used to purchase a tuition credit within a year of filing bankruptcy. To prevent “loading up” on debt prior to filing for bankruptcy, this bill lengthens the time-period before bankruptcy (from 60 days to 90 days) and lowers the dollar-amount of items purchased (from \$1000 to \$250) that would not be dischargeable through bankruptcy. No cash advance of \$750 or higher made within 70 days before filing bankruptcy would be dischargeable, nor would any debt incurred for the purpose of paying a state or local tax.

In giving creditors new responsibilities, the legislation requires creditors to educate debtors about the results of paying only the minimum payment each month, prohibits creditors from closing the accounts of consumers who incur no finance charges, gives incentives for alternative dispute resolution, and encourages honest pre-bankruptcy settlements with debtors.

The bill also has provisions to protect dispositions of family farms and to apply certain laws of individual bankruptcy to small business bankruptcy.

**Some Key Issues:** *The Homestead Exemption:* The bill would lengthen, from six months to two years before bankruptcy filing, the amount of time that a debtor would have to have lived in a particular state to claim the homestead exemption available in that state. The value of such exemption would be reduced to reflect the portions disposed of within seven years of bankruptcy with the intent to “hinder, delay, or defraud a creditor.” A homestead exemption may not exempt interest above a total of \$100,000 acquired within two years of declaring bankruptcy (unless the value is a result of a transfer of residence within a single state). Therefore, the bill discourages debtors from moving to a state with more favorable homestead laws in order to keep an expensive home after declaring bankruptcy.

*Discharging Debts Incurred from Pro-Life Activities:* The House version of this bill does **NOT** contain the language to which pro-life Members objected last year. That is, there is **no** language that would prevent the dischargeability of debts incurred as a result of peaceful, non-violent pro-life activity (such as sidewalk counseling).

**Cost to Taxpayers:** The CBO estimated that the version of this bill in the 106<sup>th</sup> Congress (H.R. 2415) would result in a new *loss* in government receipts (mostly from bankruptcy fees) of \$1 million a year beginning in fiscal year 2002. There is no revised CBO estimate for H.R. 333.

**Does the Bill Create New Federal Programs or Rules?:** Yes.

- For debtors:
  - Debtors would have to undergo credit counseling within 180 days of filing for bankruptcy and may not obtain any discharge of debts until completing a personal financial management instructional course.
  - Bankruptcy filers would have to file the three most recent years of tax returns or face dismissal of their cases.
- For creditors:
  - Creditors would be required to send information to consumers about the ramifications of paying only the minimum balance each month, introductory rates, payment deadlines, late-payment penalties, and other information.
  - Creditors would be prohibited from terminating a credit account prior to its pre-determined expiration date just because the consumer always pays off the full balance each month (and thus never incurs a finance charge).
- For other entities:
  - The Director of the Administrative Office of the United States Courts would collect statistics on individual bankruptcy, standardize and make such statistics available to the public, and submit a report on this data once a year beginning no later than October 31, 2002.
  - The Board of Governors of the Federal Reserve would be directed to study consumer protections for unauthorized use of a dual-purpose debit cards and other consumer credit issues.

- Debt-relief counseling agencies (popularly known as “bankruptcy mills”) would be required to counsel consumers on the significance of bankruptcy and what alternatives to bankruptcy consumers may have.
- The U.S. Attorney General would be directed to randomly audit no less than one out of every 250 individual bankruptcy filings.
- 23 bankruptcy judgeships would be temporarily created for certain court districts.
- District courts of appeals must expedite bankruptcy appeals to meet 30-day deadlines for certain court actions.

*For more summary information, see the CRS Report #RL30865, “Bankruptcy Reform Legislation in the 107<sup>th</sup> Congress: H.R. 333 and S. 220,” published on February 26, 2001.*

**Constitutional Authority:** Article I, Section 8, Clause 4 gives Congress the power “to establish ... uniform Laws on the subject of Bankruptcies throughout the United States.”

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